

**ASSEMBLY BILL**

**No. 2211**

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**Introduced by Assembly Member Linder**

February 18, 2016

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An act to amend Sections 488.080, 699.080, and 706.108 of the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2211, as introduced, Linder. Registered process servers.

Existing law establishes a process for the enforcement of money judgments, and authorizes a registered process server to levy under a writ of attachment or writ of execution on specified types of property. Existing law requires the registered process server, before levying under the writ, to deposit a copy of the writ with the levying officer and pay a specified fee. Existing law also permits a registered process server to serve an earnings withholding order on an employer and requires that the process server deposit specified documents with the levying officer and pay a specified fee.

This bill would provide that the registered process server is authorized to have the required documents and fee delivered to the levying officer by someone other than the process server himself or herself.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 488.080 of the Code of Civil Procedure  
2     is amended to read:

1 488.080. (a) A registered process server may levy under a writ  
2 of attachment on the following types of property:

3 (1) Real property, pursuant to Section 488.315.

4 (2) Growing crops, timber to be cut, or minerals or the like  
5 (~~including like, including~~ oil and ~~gas~~) gas, to be extracted or  
6 accounts receivable resulting from the sale thereof at the wellhead  
7 or minehead, pursuant to Section 488.325.

8 (3) Personal property in the custody of a levying officer,  
9 pursuant to Section 488.355.

10 (4) Equipment of a going business, pursuant to Section 488.375.

11 (5) Motor vehicles, vessels, mobilehomes, or commercial  
12 coaches used as equipment of a going business, pursuant to Section  
13 488.385.

14 (6) Farm products or inventory of a going business, pursuant to  
15 Section 488.405.

16 (7) Personal property used as a dwelling, pursuant to subdivision  
17 (a) of Section 700.080.

18 (8) Deposit accounts, pursuant to Section 488.455.

19 (9) Property in a safe-deposit box, pursuant to Section 488.460.

20 (10) Accounts receivable or general intangibles, pursuant to  
21 Section 488.470.

22 (11) Final money judgments, pursuant to Section 488.480.

23 (12) Interest of a defendant in personal property in the estate of  
24 a decedent, pursuant to Section 488.485.

25 (b) Before levying under the writ of attachment, the registered  
26 process server shall ~~deposit cause to be deposited with the levying~~  
27 ~~officer~~ a copy of the writ ~~with the levying officer~~ and ~~pay~~ the fee,  
28 ~~as~~ provided by Section 26721 of the Government Code.

29 (c) If a registered process server levies on property pursuant to  
30 subdivision (a), the registered process server shall do both of the  
31 following:

32 (1) Comply with the applicable levy, posting, and service  
33 provisions of Article 2 (commencing with Section 488.300).

34 (2) Request any third person served to give a garnishee's  
35 memorandum to the levying officer in compliance with Section  
36 488.610 on a form provided by the registered process server.

37 (d) Within five court days after levy under this section, all of  
38 the following shall be filed with the levying officer:

39 (1) The writ of attachment.

1 (2) A proof of service by the registered process server stating  
2 the manner of levy performed.

3 (3) Proof of service of the copy of the writ and notice of  
4 attachment on other persons, as required by Article 2 (commencing  
5 with Section 488.300).

6 (4) Instructions in writing, as required by the provisions of  
7 Section 488.030.

8 (e) If the fee provided by Section 26721 of the Government  
9 Code has been paid, the levying officer shall perform all other  
10 duties under the writ as if the levying officer had levied under the  
11 writ and shall return the writ to the court. If the registered process  
12 server does not comply with subdivisions (b) and (d), the levy is  
13 ineffective and the levying officer *is shall* not *be* required to  
14 perform any duties under the writ, and may issue a release for any  
15 property sought to be attached. The levying officer is not liable  
16 for actions taken in conformance with the provisions of this title  
17 in reliance on information provided to the levying officer under  
18 subdivision (d), except to the extent that the levying officer has  
19 actual knowledge that the information is incorrect. Nothing in this  
20 subdivision limits any liability the plaintiff or registered process  
21 server may have if the levying officer acts on the basis of incorrect  
22 information provided under subdivision (d).

23 (f) The fee for services of a registered process server under this  
24 section ~~shall be allowed as is~~ a recoverable cost pursuant to Section  
25 1033.5.

26 SEC. 2. Section 699.080 of the Code of Civil Procedure is  
27 amended to read:

28 699.080. (a) A registered process server may levy under a writ  
29 of execution on the following types of property:

30 (1) Real property, pursuant to Section 700.015.

31 (2) Growing crops, timber to be cut, or minerals or the ~~like~~  
32 ~~(including like including oil and gas)~~ gas, to be extracted or  
33 accounts receivable resulting from the sale thereof at the wellhead  
34 or minehead, pursuant to Section 700.020.

35 (3) Personal property in the custody of a levying officer,  
36 pursuant to Section 700.050.

37 (4) Personal property used as a dwelling, pursuant to subdivision  
38 (a) of Section 700.080.

39 (5) Deposit accounts, pursuant to Section 700.140.

40 (6) Property in a safe-deposit box, pursuant to Section 700.150.

1 (7) Accounts receivable or general intangibles, pursuant to  
2 Section 700.170.

3 (8) Final money judgments, pursuant to Section 700.190.

4 (9) Interest of a judgment debtor in personal property in the  
5 estate of a decedent, pursuant to Section 700.200.

6 (b) Before levying under the writ of execution, the registered  
7 process server shall ~~deposit~~ *cause to be deposited with the levying*  
8 *officer* a copy of the writ ~~with the levying officer~~ and pay the fee,  
9 as provided by Section 26721 of the Government Code.

10 (c) If a registered process server levies on property pursuant to  
11 subdivision (a), the registered process server shall do both of the  
12 following:

13 (1) Comply with the applicable levy, posting, and service  
14 provisions of Article 4 (commencing with Section 700.010).

15 (2) Request any third person served to give a garnishee's  
16 memorandum to the levying officer in compliance with Section  
17 701.030 on a form provided by the registered process server.

18 (d) Within five court days after levy under this section, all of  
19 the following shall be filed with the levying officer:

20 (1) The writ of execution.

21 (2) A proof of service by the registered process server stating  
22 the manner of levy performed.

23 (3) Proof of service of the copy of the writ and notice of levy  
24 on other persons, as required by Article 4 (commencing with  
25 Section 700.010).

26 (4) Instructions in writing, as required by the provisions of  
27 Section 687.010.

28 (e) If the fee provided by Section 26721 of the Government  
29 Code has been paid, the levying officer shall perform all other  
30 duties under the writ as if the levying officer had levied under the  
31 writ and shall return the writ to the court. If the registered process  
32 server does not comply with subdivisions (b) and (d), the levy is  
33 ineffective and the levying officer ~~is~~ *shall not be* required to  
34 perform any duties under the writ, and may issue a release for any  
35 property sought to be levied upon.

36 (f) The fee for services of a registered process server under this  
37 section ~~shall be allowed as is~~ a recoverable cost pursuant to Section  
38 1033.5.

39 (g) A registered process server may levy more than once under  
40 the same writ of execution, provided that the writ is still valid.

1 SEC. 3. Section 706.108 of the Code of Civil Procedure is  
2 amended to read:

3 706.108. (a) If a writ of execution has been issued to the county  
4 where the judgment debtor's employer is to be served and the time  
5 specified in subdivision (b) of Section 699.530 for levy on property  
6 under the writ has not expired, a judgment creditor may deliver  
7 an application for issuance of an earnings withholding order to a  
8 registered process server who may then issue an earnings  
9 withholding order.

10 (b) If the registered process server has issued the earnings  
11 withholding order, the registered process server, before serving  
12 the earnings withholding order, shall ~~deposit with the levying~~  
13 ~~officer~~ *cause to be deposited with the levying officer* a copy of the  
14 writ of execution, the application for issuance of an earnings  
15 withholding order, ~~and~~ a copy of the earnings withholding order,  
16 ~~and shall pay the fee, as provided by Section 26750 of the~~  
17 ~~Government Code.~~

18 (c) A registered process server may serve an earnings  
19 withholding order on an employer whether the earnings  
20 withholding order was issued by a levying officer or by a registered  
21 process server, but no earnings withholding order may be served  
22 after the time specified in subdivision (b) of Section 699.530. In  
23 performing this function, the registered process server shall serve  
24 upon the designated employer all of the following:

25 (1) The original and one copy of the earnings withholding order.

26 (2) The form for the employer's return.

27 (3) The notice to the employee of the earnings withholding  
28 order.

29 (4) A copy of the form that the judgment debtor may use to  
30 make a claim of exemption.

31 (5) A copy of the form the judgment debtor may use to provide  
32 a financial statement.

33 (6) A copy of the employer's instructions referred to in Section  
34 706.127, except as otherwise prescribed in rules adopted by the  
35 Judicial Council.

36 (d) Within five court days after service under this section, all  
37 of the following shall be filed with the levying officer:

38 (1) The writ of execution, if it is not already in the hands of the  
39 levying officer.

1 (2) Proof of service on the employer of the papers listed in  
2 subdivision (c).

3 (3) Instructions in writing, as required by the provisions of  
4 Section 687.010.

5 (e) If the fee provided by Section 26750 of the Government  
6 Code has been paid, the levying officer shall perform all other  
7 duties required by this chapter as if the levying officer had served  
8 the earnings withholding order. If the registered process server  
9 does not comply with subdivisions (b), where applicable, and (d),  
10 the service of the earnings withholding order is ineffective and the  
11 levying officer *shall* not *be* required to perform any duties under  
12 the order, and may terminate the order and ~~may~~ release any  
13 withheld earnings to the judgment debtor.

14 (f) The fee for services of a registered process server under this  
15 section ~~shall be allowed as~~ is a recoverable cost pursuant to Section  
16 1033.5.